

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
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I-07-34

**COMMISSION'S RESPONSE TO PETITION FOR INVESTIGATION FILED BY
BOSTON POLICE PATROLMEN'S ASSOCIATION**

Background

On January 3, 2007, pursuant to the provisions of G.L. c. 31, § 2(a), the Boston Police Patrolmen's Association (BPPA) and 10 Individuals filed a "Petition for Investigation" with the Commission regarding the December 26, 2006 decision of the state's Human Resources Division (HRD) approving the transfer of 33 Boston Municipal Police Officers from the Boston Municipal Police Department (BMPD) to the Boston Police Department. Specifically, BPPA stated in its "Petition for Investigation" that "an investigation into [the transfer] and a de novo hearing on the HRD appeal will show that the transfer of BMPD officer violated Chapter 31. The transfer was illegal because the positions of BMPD officers and BPD are not "similar" under c.31, § 35; BMPD employees are not properly deemed "police officers" or "permanent employees" and the transfer of beneficiaries of political cronyism is contrary to 'basic merit principles'."

At the same time, the BPPA also submitted an appeal to the Commission pursuant to G.L. c. 31, § 2(b) regarding the same above-referenced transfer. (See Case No. G-07-33) Motions to Dismiss the "2(b) appeal" were filed with the Commission by the City of Boston, the Boston Municipal Police Patrolmen's Association and the 33 individual police officers followed by a pre-hearing, wherein the Commission invited oral

arguments on the Motions from the parties, and the submission of responses and counter-responses to the motions.

On March 15, 2007, the Commission issued a decision allowing the Motions to Dismiss the “2(b) appeal”, primarily on the grounds that the BPPA had no standing to file an appeal pursuant to G.L. c. 31, § 2(b) as the BPPA is not an aggrieved person with any standing to appeal HRD’s decision to approve the transfers in question. A copy of that decision under Case No. G-07-33, in which the “2(b) appeal” was dismissed, is attached.

In regard to the “Petition for Investigation”, which is the subject of this Response, the BPPA, in response to a request from the Commission, stated in a January 17, 2007 letter that the Commission “should investigate whether the transfers...approved by HRD...is supported by substantial evidence and consistent with G.L. c. 31, § 35 and “basic merit principles” under c.31, §§1-2...This roughly is the exact same standard to be applied in the (2(b) appeal)”. BPPA’s letter goes on to state in relevant part that, “the standard is not duplicative to the degree that the Commission rules in the context of the (“2(b) appeal”) that Petitioners lack standing, that they are precluded from challenging the application of St., 1998, c.282, or St. 1993, c.310 to Transferees, or are precluded from challenging the designation of BMPD officers as “police officers” or the classification of BMPD officers as “Boston Municipal Police Officers”...” (emphasis in original)

Concurrent with the filing deadlines established with the above-referenced “2(b) appeal”, the Commission also accepted position statements from BPPA, the City of Boston, the Boston Municipal Police Patrolmen’s Association and the 33 individuals transferred regarding the BPPA’s Petition for Investigation under Section 2(a).

Positions of the Parties

In a three-page position statement submitted to the Commission on February 2, 2007, the BPPA argues that “statutory language compels the Commission to investigate this matter and then cites and highlights pertinent parts of Section 2(b) which states that the Commission, “shall have the following powers and duties:

To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.” (emphasis in original BPPA document)”

According to BPPA, the above language “affords no discretion for the Commission to reject an otherwise legitimate investigation request from persons identified in § 2(a), except, perhaps, where the subject of a requested investigation is already subject to a § 2(b) appeal.” Finally, BPPA argues that, “This mandate to investigate violations of Chapter 31 is confirmed by the Commission’s status as guardian of basic merit principles under Chapter 310 of the Acts of 1993. As such, an investigation into the transfer of BMPD officers into the BPD is appropriate and necessary to fulfill the Commission’s statutory obligations, especially if it rejects the BPPA’s standing or arguments in the adjacent appeal of #G-07-33”

In a six-page position statement submitted to the Commission on February 8, 2007, the City counters that BPPA’s Petition for Investigation is “entirely duplicative of their legally deficient § 2(b) appeal...and, therefore, is nothing more than a blatant attempt to get through § 2(a) what they cannot get through § 2(b), the Commission’s review, and potential reversal, of an HRD decision.” As such, the City argues that, “Because acceptance of the Petitioners’ request would render all the limitations and conditions under § 2(b) utterly meaningless and thus run directly counter to the ‘basis tenet of statutory construction [that] requires that a statute be constructed so that effect is given to

all of its provisions, so that no part will be inoperative or superfluous’.” Boston Police Patrolmen’s Association v. Police Department of Boston, 446 Mass. 46, 50 (2006). See also, LeClair v. Town of Norwell, 430 Mass. 328, 333 (1999) (“We, however, do not read statutory language in isolation. When the meaning of a statute is brought into question, a court properly should read other sections and should construe them together”) (internal quotations and citations omitted).

Similarly, the City argues that “the Petitioners’ position also runs afoul of a related rule of statutory construction – that is, that where the legislature has included a section by explicit reference, it implicitly forecloses recovery under other more general sections. See Brady v. Brady, 380 Mass. 480, 484 (1980); Mullins v. Garthwait, 875 P. Supp. 14, 20 (D. Mass. 1994).” Again according to the City, “the Legislature’s very detailed and specific scheme governing appeals from the HRD to the Commission in § 2(b) therefore implicitly forecloses such an “appeal” under the more general investigation provisions of § 2(a). Indeed, if, as the Petitioners claim, there were no differences between the relief afforded by §§ 2(a) and 2(b), there would have been no need for the Legislature to separate them out into different sections containing different terms, conditions and restrictions.”

Conclusion

In its Petition for Investigation submitted to the Commission on January 3, 2007, BPPA states that “an investigation into [the transfer] and a de novo hearing on the HRD appeal will show that the transfer of BMPD officers violated Chapter 31. The transfer was illegal because the positions of BMPD officers and BPD are not “similar” under c.31, § 35; BMPD employees are not properly deemed “police officers” or “permanent

employees” and the transfer of beneficiaries of political cronyism is contrary to ‘basic merit principles’.”

All three of the above-referenced issues, for which BPPA now seeks an investigation, have been the subject of prior Commission decisions. First, in regard to the issue of whether the positions in question are “similar” under c.31, § 35 or whether the individuals are properly deemed police officers, the Civil Service Commission has already concluded that “there is little doubt that MPD officers perform a police function on (Boston Housing Authority) property” and that “when on that property, there exists an inconsequential difference between a BPD and a MPD officer.” BPPA v. Boston, G-3563 (Decision, June 26, 2003; Investigative Report Dated September 9, 1999). In Adams v. Human Resources Division, 14 MCSR 18, 20 (2001), the Commission again determined that BMPD officers, “have employment or experience as police officers, which involved the full use of police powers.” In a Chapter 310 proceeding, Civil Service No. G-06-113, the Commission ruled that the classification of this title was settled and not open to question. (Pretrial Order, dated June 16, 2006). BPPA was a moving party in one of the above referenced cases (G-3563) and an Intervenor in another (G-06-113).

Second, in regard to whether the individuals are “permanent employees” as defined by Chapter 31, the Commission itself, as part of the above-referenced Chapter 310 proceeding, in which BPPA was an Intervenor, granted civil service permanency to twenty-three Boston Municipal Police Officers and Sergeants who sought to be declared permanent in their titles. (G-06-113 Final Decision, October 26, 2006). The remaining municipal police officers were previously granted permanency pursuant to Chapter 282 of the Acts of 1998.

Finally, on the issue of whether these officers, as baldly asserted by BPPA, were appointed as a result of political cronyism, the Commission also heard exhaustive testimony on this issue as part of the same 2006 Chapter 310 hearing. After reviewing all relevant testimony and exhibits, including exhibits put forth by BPPA, the Commission concluded, "...the 23 employees in question are qualified to serve in their positions and were hired and/or promoted through a system that relied on basic merit principles. In the instant case, all of the 23 employees have taken and passed the civil service written examination for municipal police officers. The selection, hiring, retention and promotion of the employees in question were consistent with basic merit principles." (emphasis in original) (Id. at p.15).

In summary, what BPPA is actually asking the Commission to do, as part of its Petition for Investigation, is to review our own prior decisions and findings on the very same issues for which BPPA is now seeking an investigation, more aptly defined as a request for "*re*-investigation". When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." McCarthy v. Town of Oak Bluffs, 419 Mass. 227, 233 (1994) (quoting Restatement (Second) of Judgments § 27 (1982)).

We see no further matter to be investigated as we have reviewed and decided on the matters before as part of previous decisions, including one which the BPPA is currently appealing in regard to Case No. G-06-113. (See Suffolk Super Court Civil Action No. SUCV2006-4617).

Further, the Commission concurs with the City's argument that BPPA's Petition for Investigation is duplicative of their now-dismissed § 2(b) appeal and that acceptance of

the Petitioners' request would render all the limitations and conditions under § 2(b) meaningless.

For all of the above reasons, BPPA's Petition for Investigation under Docket No. I-07-34 is denied.

Civil Service Commission

John J. Guerin, Commissioner

Christopher C. Bowman, Commissioner

By a 3-0 vote of the Civil Service Commission (Bowman, Commissioner – YES; Guerin, Commissioner – YES; Marquis, Commissioner – YES; [Taylor, Absent] on March 15, 2007.

A true record. Attest:

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

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